

FILED
COURT OF COMMON PLEAS
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LORAIN COUNTY
NATALIE B. NEESON, CLERK

IN THE COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO

86072-80

CHEMICAL RECOVERY SYSTEMS, INC.
142 Locust Street
P.O. Box 375
Elyria, OH 44035,

Plaintiff,

-vs-

ELYRIA CITY DEPARTMENT OF HEALTH
202 Chestnut Street
Elyria, OH 44035,

Defendant.

CASE NO. _____

JUDGE PAUL J. MIKITS

COMPLAINT FOR MONEY DAMAGES;
COMPLAINT FOR DECLARATORY
RELIEF; APPLICATION FOR
TEMPORARY RESTRAINING
ORDER; APPLICATION FOR
PRELIMINARY INJUNCTION; AND
APPLICATION FOR PERMANENT
INJUNCTION

FIRST CAUSE OF ACTION

COMPLAINT FOR MONETARY JUDGMENT

1. Plaintiff is an Ohio corporation for profit.
2. Plaintiff is the operator of a chemical distilling plant located at 142 Locust Street, Elyria, Ohio 44035.
3. Plaintiff's operation consists of two (2) chemical stills, storage tanks adjacent to and used in conjunction with said stills, a laboratory, office and other fixtures and equipment associated with and necessary for the operation.
4. Plaintiff's principal business consists of distilling chemicals comprising what are commonly known as "paint thinners" to remove dissolved paint components therefrom in order to recover a pure paint thinner free from dissolved paint and other components for re-use by paint manufacturers and other customers.

5. The aforementioned chemical distilling operation has been in operation at 142 Locust Street, Elyria, Ohio 44035 for many years and was previously operated under the name of OBITTS CHEMICAL COMPANY.

6. Plaintiff employs a number of full time workers at the aforesaid location both for production and administrative purposes.

7. For some time members of various departments of the City of Elyria, including Defendant, have requested and been granted access to Plaintiff's premises for inspection purposes.

8. Inspections by Defendant and other city departments have been frequent (ranging from several times per month to several times per week), have normally been without prior notice and members of said city departments have always, save one occasion, been granted free and unlimited access to Plaintiff's premises for the purpose of inspection notwithstanding the fact that said inspections have been disruptive of Plaintiff's business operations and burdensome upon Plaintiff.

9. Plaintiff has at all times been responsive to complaints, suggestions and observations of members of various departments of the City of Elyria, including Defendant, who have inspected its premises and has endeavored to comply in every way with their requests, including but not limited to expenditures exceeding SIXTY THOUSAND DOLLARS (\$60,000.00) for the purpose of cleanup and removal of materials from the premises.

10. As recently as Friday, May 30, 1980, free access was given to a member of the staff of the Elyria Solicitor's Office for inspection of Plaintiff's premises.

11. On June 3, 1980, at approximately 1:20 P.M., the Commissioner of the Elyria City Department of Health, a member of the Elyria City Solicitor's staff, an Elyria police officer and several other unknown parties together entered onto Plaintiff's premises unannounced, without presenting a search warrant or other document authorizing their entry, without securing permission from Plaintiff or its agent or employee, and placed a tag upon a storage tank, or set of storage tanks, located adjacent to one of the aforementioned chemical stills on the premises on the easterly portion of Plaintiff's property. The text of said tag was as follows:

"Ordered Closed. This location is in violation of Reg. Misc. Health Req. Sections 3, 4 and 18.

Elyria City Department of Health
(Signatures)
G. M. Bell, R.S.
Ernest Bartha, Sanitarian
June 3, 1980"

12. After placement of the tag as set forth in the immediately foregoing paragraph, one of the parties set forth therein informed Plaintiff's office manager that a tag was placed upon a tank upon Plaintiff's premises and that the tank was ordered closed. This individual failed to identify what tank was tagged, failed to serve the office manager with a copy of any written order and gave no explanation of the order or what it affected.

13. As a result thereof, Plaintiff's Plant Superintendent immediately closed both still operations and dismissed production employees for the remainder of the shift.

14. The order forbidding use of the tank which was tagged by Defendant prevents operation of the chemical still adjacent thereto.

15. The entire plant operation of Plaintiff was shut down as a precaution against violation of the unclear shutdown order promulgated by Defendant and production employees for the second shift on June 3, 1980, and the first shift on June 4, 1980, were told not to report to work.

16. As a result thereof Plaintiff has lost the time of its employees, wages paid to said employees and production affected by the shutdown in an, as yet, undetermined amount.

SECOND CAUSE OF ACTION
COMPLAINT FOR DECLARATORY RELIEF

17. Plaintiff incorporates all foregoing paragraphs herein as if fully rewritten.

18. The text of the tag attached to the subject tank as alleged in Paragraph 11 hereof refers to Sections 3, 4 and 18 of the Miscellaneous Health Hazards and Insanitary Conditions Regulations of the Elyria City Department of Health (hereinafter referred to for convenience as Regulations), a copy of which Regulations is attached hereto and marked EXHIBIT A.

19. With the exception of one grammatical sentence which provides that "[n]o person except the Health Commissioner shall remove the tag or label," Section 3 of said Regulations is not a prohibition section but rather it is a section which grants certain powers to the Commissioner of the Elyria City Department of Health.

20. Plaintiff has not violated the one prohibitive sentence in Section 3 of said Regulations and therefore cannot be in violation of said section.

21. The Commissioner of the Elyria City Department of Health (hereinafter referred to for convenience as Commissioner) failed to meet the requirement of Section 3 of said Regulations as to the wording of the tag placed on the subject tank and, more importantly, failed to meet the requirements set forth in the last grammatical sentence of Section 3 of said Regulations.

22. Section 4 of said Regulations is not a prohibition section but rather a section which mandates certain conduct on the part of the Commissioner.

23. The power granted the Commissioner in Section 3 of said Regulations and the action mandated in Section 4 thereof are void by reason of being unlawful and in violation of provisions of the United States and Ohio Constitutions which prohibit deprivation of property and/or seizure of property without due process of law.

24. Even if Sections 3 and 4 of said Regulations are lawful and constitutional, which Plaintiff specifically denies, the order of the Commissioner as set forth in the subject tag was improper and void by reason of the fact that it resulted from an unlawful entry upon Plaintiff's premises for the purpose of searching said premises and seizing Plaintiff's property without due process of law, which unlawful entry was tantamount to a trespass.

25. Plaintiff concedes that Section 18 of said Regulations, also referred to in the subject tag, is a prohibition section but states that said section is void and unenforceable by reason of its being so vague as not to meet the requirements of the United States and Ohio Constitutions as to specificity in statutes, ordinances and codes or regulations which prohibit activity by persons or corporations.

26. The condition and operation of the subject tank on Plaintiff's premises does not violate the provisions of Section 18 of said Regulations nor does it fall within categories set forth in Sections 3 and 4 of said Regulations which permit or mandate the actions set forth therein by the Commissioner.

THIRD CAUSE OF ACTION
APPLICATION FOR TEMPORARY RESTRAINING ORDER

27. Plaintiff repeats all foregoing paragraphs as if fully rewritten.

28. The action by the Elyria City Department of Health in closing the operation of the subject tank upon Plaintiff's premises was a wrongful act and, unless Defendant is restrained immediately during the pendency of this action from enforcing its order of closure and from further unlawfully ordering closure of Plaintiff's operations, Plaintiff will suffer irreparable injury in the form of lost work time of its employees, wages paid to said employees, and lost production.

29. A temporary restraining order, restraining Defendant from enforcing the subject order of closure and from further unlawfully ordering closure of Plaintiff's operations, should be granted without notice by reason of the fact that Defendant acted unlawfully as aforesaid in ordering closure of operations of the subject tank upon Plaintiff's premises and will continue to do so unless restrained.

FOURTH CAUSE OF ACTION
APPLICATION FOR PRELIMINARY INJUNCTION

30. Plaintiff repeats all foregoing paragraphs as if fully rewritten.

31. Plaintiff states that it will suffer irreparable injury as set forth in Paragraph 28 herein unless a preliminary injunction is granted preventing Defendant from enforcing the subject order of closure and further unlawfully ordering closure of Plaintiff's operations.

FIFTH CAUSE OF ACTION
APPLICATION FOR PERMANENT INJUNCTION

32. Plaintiff repeats all foregoing paragraphs as if fully rewritten.

33. Plaintiff states that the actions of Defendant in ordering the closure of its operation of the subject tank on Plaintiff's premises was unlawful and unconstitutional as previously set forth herein and that Plaintiff will suffer irreparable injury in the form heretofore set forth unless a permanent injunction is granted by this Court preventing Defendant from further ordering closure of Plaintiff's operations.

WHEREFORE, Plaintiff respectfully demands that the following relief be granted by the Court:

A. Upon Plaintiff's First Cause of Action it prays judgment against Defendant in an amount to be determined by the Court as compensatory damages for the damages and injuries suffered by Plaintiff in the form of lost time of its employees, wages paid to said employees and lost production.

B. Upon Plaintiff's Second Cause of Action declaratory relief declaring that:

- i. Sections 3 and 4 of said Regulations are unconstitutional by reason of the fact that the powers granted to and mandated upon the Commissioner therein are tantamount to violations of provisions of the United States and Ohio Constitutions prohibiting deprivation

of property or seizure of property without due process of law.

- ii. Defendant failed to comply with the provisions of Section 3 of the said Regulations regarding the language appearing upon the tag placed upon the subject tank herein and the provisions set forth in the last grammatical sentence of said section.
- iii. Section 18 of said Regulations is void and unenforceable by reason of its being so vague as not to meet the requirements of the United States and Ohio Constitutions as to specificity in statutes, ordinances and codes or regulations which prohibit activity by persons or corporations.
- iv. Even if the powers set forth in Sections 3 and 4 of said Regulations are lawful and constitutional, which Plaintiff specifically denies, the subject order of closure of operation of a tank on Plaintiff's premises is unlawful and void by reason of its resulting from an unlawful and unconstitutional search of Plaintiff's premises, an unlawful and unconstitutional seizure of Plaintiff's property, an unlawful and unconstitutional deprivation of Plaintiff's property without due process of law and an unlawful trespass upon Plaintiff's property.

v. The condition and operation of the subject tank upon Plaintiff's premises does not violate Section 18 of said Regulations nor does it fall into any of the categories set forth in Sections 3 and 4 of said Regulations which would permit or mandate an order of closure of operations by the Commissioner.

C. Upon Plaintiff's Third Cause of Action, that a temporary restraining order be granted by the Court restraining Defendant from enforcing the subject order of closure and from further ordering closure of any operations upon Plaintiff's premises without an order of a court of competent jurisdiction for the period allowed by law as to temporary restraining orders and that said temporary restraining order be granted without notice and subject to the posting of any reasonable bond to be fixed by the Court pursuant to law.

D. Upon Plaintiff's Fourth Cause of Action, that a preliminary injunction be granted by the Court preventing Defendant from enforcing the subject order of closure and from further ordering closure of any operations upon Plaintiff's premises without an order of a court of competent jurisdiction during the pendency of this action.

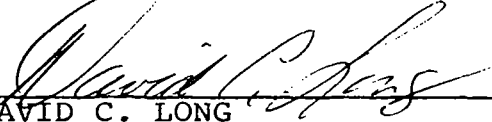
E. Upon Plaintiff's Fifth Cause of Action, that a permanent injunction be granted by the Court enjoining Defendant

from enforcing the subject order of closure and from further ordering closure of any operations upon Plaintiff's premises without an order of a court of competent jurisdiction.

F. Plaintiff's attorney fees, costs incurred herein and any other relief which the Court deems just and equitable in the premises.

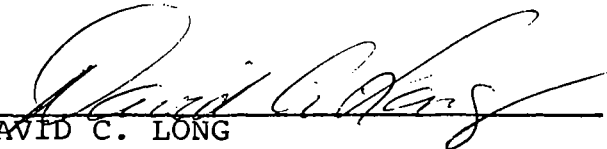
DAVID C. LONG CO., L.P.A.

BY:


DAVID C. LONG
Attorney for Plaintiff
300 Fourth Street
P.O. Box 427
Elyria, OH 44036
Tel. (216) 323-3331

TO THE CLERK:

Please serve the Defendant personally, c/o Ernest G. Bartha, Commissioner, at the address set forth in the caption herein.


DAVID C. LONG
Attorney for Plaintiff

MISCELLANEOUS HEALTH HAZARDS AND INSANITARY CONDITIONS REGULATION

A RULE AND REGULATION OF THE BOARD OF HEALTH DEFINING HEALTH COMMISSIONER, PERSON, HEALTH HAZARD AND INSANITARY CONDITION AND ESTABLISHING CERTAIN SANITARY STANDARDS FOR ALL BUILDINGS AND THE PREMISES THEREOF AND REQUIRING THE OWNERS, AGENTS, TENANTS AND OCCUPANTS OF SUCH BUILDINGS AND PREMISES TO OBSERVE CERTAIN SANITARY STANDARDS, ESTABLISHING THE METHODS OF RETAINING FOR EXAMINATION AND THE DISPOSITION OF ANY STRUCTURE, EQUIPMENT, INSTALLATION, UTENSIL, FOOD, DRINK, FEED, CHEMICAL OR BIOLOGICAL PREPARATION, DEVICE OR ARTICLE OF ANY KIND.

BE IT RESOLVED BY THE BOARD OF HEALTH OF THE CITY OF ELYRIA, OHIO AS FOLLOWS:

SECTION 1. DEFINITIONS. The following definitions shall apply in the interpretation of this rule and regulation.

A. HEALTH COMMISSIONER. The term "Health Commissioner" shall mean the Health Commissioner of Elyria, Ohio, or his authorized representatives.

B. PERSON. The word "person" shall mean person, firm, corporation or association.

C. HEALTH HAZARD. The term "health hazard" shall mean that state or condition of environment that places, either directly or indirectly, the health of a person in danger or peril.

D. INSANITARY CONDITION. The term "insanitary condition" shall mean any environmental condition that may produce a health hazard.

SECTION 2. All structures, installations, equipment, premises and the repair and maintenance thereof shall meet all regulations and requirements of the Department of Health, Department of Safety and the Department of Service of the City of Elyria, Ohio.

SECTION 3. When any structure, installation, equipment, food, drink, feed, chemical or biological preparation, device or article of any kind, which, in the opinion of the Health Commissioner, may be a health hazard, the Health Commissioner shall affix on that structure, installation, utensil, equipment, food, drink, feed, chemical or biological preparation, device or article, a tag or label bearing the words, "ELYRIA BOARD OF HEALTH -- RETAINED," and no person shall use, sell or dispose of in any manner that structure, installation, utensil, equipment, food, drink, feed, chemical or biological preparation, device or article until, after further examination is made thereof, the tag or label is removed by the Health Commissioner. The Health Commissioner may seize and hold the thing so tagged or labeled in any place so designated by him. No person except the Health Commissioner shall remove the tag or label. When the tag or label is affixed to any structure, installation, utensil, equipment, food, drink, feed, chemical or biological preparation, device or

article, the Health Commissioner shall give, if possible, the owner, occupant, operator or keeper thereof an order stating that the thing so tagged or labeled shall not be used in any manner and shall not be moved until the tag or label is removed by the Health Commissioner.

SECTION 4. The Health Commissioner shall forbid the use of, condemn and dispose of as he deems necessary, any structure, installation, utensil, equipment, food, drink, feed, chemical or biological preparation, device or article of any kind which, in his opinion, is a health hazard.

SECTION 5. Any dwelling unit or any other building that by reason of poor ventilation, deterioration, source of infection of disease or any other insanitary condition, becomes a health hazard, the Health Commissioner shall order the insanitary condition that caused the health hazard to be abated or if the building is unfit for human habitation or dangerous to life or health from any cause, he shall issue an order requiring all persons to vacate such building or any part thereof.

SECTION 6. The owner or agent of any building shall be responsible for adequate natural light and the installations of equipment for the procurement of adequate artificial light in all rooms, enclosures and halls therein.

SECTION 7. The owner or agent of any building shall be responsible for the installation of equipment for adequate ventilation, either natural and/or artificial, in all rooms, enclosures and halls therein.

SECTION 8. The owner or agent of any building shall be responsible for the maintenance of the exterior of the building so that the occupants therein shall be protected from the elements and from animal pests, except when the building is leased with the provision that the maintenance of this kind is the responsibility of the leasee, then the leasee is responsible for this kind of maintenance.

SECTION 9. The owner or agent of any building shall be responsible for the condition of the floors, walls and ceilings of all rooms, enclosures and halls, which shall be constructed and maintained in such a manner that they will be tight and easily cleaned, except when the building is leased with the provision that construction, repair and maintenance of this kind is the responsibility of the leasee; then the leasee is responsible for this kind of construction, repair and maintenance.

SECTION 10. The owner or agent of any building shall be responsible for the installation and maintenance of adequate rain carriers, so that the rain water will be properly conducted to the curb or to a storm sewer, except when the building is leased with the provision that installations and maintenance of this kind is the responsibility of the leasee; then the leasee is responsible for these kinds of installations and maintenance.

SECTION 11. The owner or agent of any building shall not allow any sewer, water closet or drain to leak, to be out of repair, to be

tainers are tightly covered at all times except when the garbage is being received or removed from the containers or are being cleaned. Rubbish containers shall be so covered as to protect the contents from the elements and animal pests and insects. All containers of garbage and rubbish shall be kept in a clean, sanitary condition.

SECTION 18. No person shall deposit or allow to accumulate in any building, premises, yard, court, lot, street, alley, sidewalk or any other place, except in authorized receptacles, any substance, solid, semi-solid or liquid, of animal, vegetable or mineral origin, that by its decay, decomposition, chemical action or by becoming a harbor for animal or insect pests, would become an insanitary condition or a health hazard.

SECTION 19. No person shall carry or convey in any vehicle or device, any earth, sand, gravel, dirt, rubbish, garbage, ashes or any substance solid, semi-solid or liquid, or any article or matter of any kind whatsoever, so that the same shall be scattered, dropped or spilled therefrom; and all vehicles or devices conveying foul, dusty or offensive matter of any kind shall have a tight body and shall be closely and securely covered.

SECTION 20. No person shall carry or convey in any vehicle or device through the streets or alleys, any soap grease, offal, butcher or meat dealers' refuse, except in a vehicle or device with a tight body and a tight cover, or in a vehicle or device in which are containers with tight fitting covers, so that the substance placed therein will not become offensive, attract animal or insect pests or become an insanitary condition or a health hazard, except when special permission is granted by the Health Commissioner if he deems this permission is not detrimental to the public health.

SECTION 21. No person shall allow any slaughter house, rendering establishment, factory, fertilizer plant or a business of any kind or the premises thereof, by reason of being foul, nauseous or offensive, to create an insanitary condition or become a health hazard.

SECTION 22. No person shall keep any horse, mule, cow or other large animal in any stable, barn or other structure unless that stable, barn or structure shall have a floor of impervious material and shall be so drained that all fluid excrement or refuse liquid shall be conducted into a City sanitary sewer. All manure and refuse shall be placed in tightly covered containers and removed from the premises before the manure and other refuse becomes offensive. The structure, animals and premises shall be kept in a sanitary condition so that they shall not become offensive and so that they will not harbor animal or insect pests.

SECTION 23. No person shall, with the exception of slaughter houses and stock yards, where swine are kept temporarily for slaughter or sale, keep any swine in the City of Elyria, Ohio. Special permission may be granted to laboratories doing scientific procedures.